IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7342 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MAHESHKUMAR JAGUBHAI NALIAPARA

Appearance:

Mr.R.V. Desai, ASSTT GOVERNMENT PLEADER for Petitioner

Mr.Upadhyaya for MR MUKESH H RATHOD for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 12/06/2001

ORAL JUDGEMENT

The present petition is filed by the State of Gujarat through the Deputy Secretary, Revenue Department Sachivalaya, Gandhinagar, challenging the award dated 12.9.1997 passed by the learned Presiding Officer, Labour Court, Junagadh in Reference LCJ No.172/94, which is at Annexure 'A' to the petition, whereby the respondent herein was directed to be appointed as a daily wager-unskilled labourer on his original post without awarding any back wages or continuity of service.

2. Mr.Upadhyaya for Mr.Mukesh H. Rathod submitted that the said award was complied with by the authorities by reinstating the respondent at Chhaya, district Porbandar in January 1998. The present Special Civil Application was filed on 4.7.2000. On the other hand the respondent filed an application being No.ID/ Misc./ 4/ 99 for interpretation of the award which came to be disposed by an order dated 8.10.1999, whereby the award passed in Reference LCJ No.172/94 came to be clarified/ interpreted to the effect that the present respondent be given work jointly in the office of respondent no.2 of that application, i.e. Inquiry Officer, Office of the City Survey at Bilkha and in the office at Mendarda.

3. In this Special Civil Application, this Court (Coram: P.B. Majmudar, J.) on 5.12.2000 passed an order, which reads as under :

> "Since the matter is admitted, interim relief granted by this Court is confirmed. Mr.Desai, on instructions, states that, at present, there is no vacancy available at Mendarda wherein the respondent can be accommodated. As and when any vacancy arises in the near future either at Visavadar, Mendarda or Junagadh, or any other nearby place to Junagadh, the respondent will be accommodated by giving top preference for the same on the post in which he is serving. Hearing of Special Civil Application is expedited and is ordered to be fixed for final hearing in June 2001."

4. Today, when the matter is called out, learned advocate Mr.Upadhyaya for Mr.Rathod, produced a xerox copy of letter dated 17.5.2001, whereby the present respondent is ordered to be absorbed in the Office of the Inquiry Officer, City Survey Office, Junagadh. Mr.Upadhyaya, learned advocate also stated that since 8.6.2001, the respondent is allowed to resume duty.

5. In this view of matter, i.e. when the award dated 12.9.1997 is already implemented by the present petitioner authorities by reinstating the respondent in January 1998 and further after the order of this Court dated 5.12.2000, they have also complied with the order dated 8.10./1999, no challenge can be said to be surviving in the present petition. Mr.R.V. Desai, learned Asstt. Govt. Pleader pointed out a judgement of the Honourable Apex Court in the matter of State of Himachal Pradesh v. Suresh Kumar Verma and another, AIR

1996 SC 1565, wherein the Apex Court has held that, appointment on daily wage basis is not an appointment to post according to rules. The Apex Court has also held that in case of termination of daily wage employees due to coming to an end of project employing them, the Court cannot give directions to reengage them in any other work or appoint them against the existing vacancies. The controversy in the petition is not surviving inasmuch as the respondent authorities themselves have complied with the award of the Labour court much prior to filing of the present petition, i.e. respondent was reinstated in service in January 1998, the present petition is filed only on 4.7.2000 and even during pendency of the petition once again the order passed by the Labour Court on 8.10.1999 is complied with by giving the respondent posting at Junagadh. Nothing survives in the petition and this petition is disposed of.

6. Mr.Upadhyay, learned advocate for the respondent workman submitted that in view of the fact that petitioner was relieved from his earlier place of work, i.e. Chhaya, Porbandar district in January 2001, and he came to be given appointed at Junagadh only on 8.6.2001, the authorities may be directed to pay the wags for the intervening period.

7. On the other hand, the learned Assistant Government Pleader submitted that as it was not convenient for the employee to work at Chhaya, he himself was not reporting to work at Chhaya; therefore he is not entitled for the wages of the intervening period.

8. Taking into consideration the rival contentions, they involve disputed question of facts, hence no order is passed about the wages for the intervening period.

9. In view of the above, the present petition is disposed of without any further directions. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)
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